IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7233 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

K N RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR PARESH UPADHYAY for Petitioner

MR SP HASURKAR with MR PB BHATT,AGP for respondent no. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 23/09/98

ORAL JUDGEMENT

Rule. Mr. PB Bhatt learned AGP waives service of rule on behalf of the respondent.

The petitioner in this petition has challenged the order at Annexure-A dated 5.8.1998 removing him from the service as Social Welfare Officer, Class-II. The

order of removal was passed by the respondent in pursuance to the departmental inquiry held against the petitioner. The petitioner has been served with thecharge-sheet for the alleged irregularity of 1983 on 31.7.1992. The combined reading of the three charges levelled against the petitioner, the following facts emerges:

"When the petitioner working as Social Welfare Officer (Developing Caste) at Bhavnagar in the year 1983-84, the petitioner (1) had as a Committee Member of the selection of a Peon, corrected the marks in favour of one candidate; (2) had not observed the rules with regard tocandidates under the Driving Training Scheme of the Developing Caste; and (3) did not supervise properly the self-employed Scheme so far as it pertains to giving of hand-carts to its beneficiaries."

It is the defence of the petitioner with regard to the first charge that the petitioner has given only 17 marks to the candidate inquestion out of total 50 marks from which the marks were to be given by the petitioner. It was further the case of the petitioner that the petitioner was a Committee Member and was not the appointing authority. On the basis of the marks given by the both the members of the Selection Committee, the record was forwarded to the Head Office for its perusal and concurrence and with the approval of the Head Office appointment was given by some other officer in his office to the candidate in question.

With regard to the second charge, it was the case of the petitioner that as per the rules whatever is required to be done is done in his right spirit. Similarly, the petitoner defended himself with regard to the third charge by pointing out the Government Resolution dated 10.9.1981, the said scheme was required to be implemented. The Inquiry Officer after considering the documentary evidence as well as oral evidence on record, has held that the petitioner is not responsible for calling the name of the candidates for the selection to the post of Peon, however, the allegations made against the petitioner substituting 27 marks from 17 marks by over-writing whereby the candidate Shri Sohaliya has been selected is held proved. The Inquiry Officer has also recorded finding with respect to the charge no. 2 by holding that the charge is partly proved, as the petitioner was found to be negligent.As far as the charge no. 3 is concerned, similar finding was recorded. It is not in dispute that the Disciplinary Authority has accepted the report of the Inquiry Officer in toto. The

State Government after considering the representation of the petitioner passed the order dated 5.8.1998 removing the petitioner from the services of the Government, which is under challenge in this petition.

This Court on 4.9.1998 issued the notice to the respondent and made it returnable on 10.9.1998. The matter was thereafter adjourned at the request of the learned Govt. Solicitor Mr.Hasurkar to 14.9.1998. On 14.9.1998 when the matter was argued, I suggested that considering the gravity of the proved misconduct, it is not a case where extreme order of removal can be passed against the petitioner, especially when the petitioner is retiring on 30.9.1998. The petitioner, on the contrary, had shown his wilingness for voluntary retirement provided the order of removal is revoked. Since this was a suggestion, the learned Government Solicitor Mr.Hasurkar sought time to take necessary instructions in the matter and, thereafter the matter was adjourned to 21.9.1998. Even on 21.9.98, also a further requested made to adjourn the case. I, therefore, again granted time till today. Today, a statement was made on behalf of the Learned Government Solicitor that the respondent is not prepared to re-consider the case of the petitioner. Under the circumstances, the matter is required to be heard on merits.

After having heard the learned advocates and having gone through the inquiry report as well as the judgment cited at Bar, I am of the view that the petition is required to be allowed on more than one ground. In the instant case, the respondent thought it fit to initiate the departmental inquiry for the alleged illegality of appointment of peons taken place in the month of April, 1983, wherein the petitioner took part as one of the member of the Selection Committee, and who corrected the marks in favour of one candidate. Thus, an incident which has taken place some years back in the year 1983, was re-opened on 31.7.1992 when the charge-sheet was given to the petitioner at the fag end of the service of the petitioner as the petitioner is retiring on 30.9.1998. Assuming that the petitioner has corrected marks 27 from 17, I fail to understand as what is the misconduct on his part ? The petitoner was merely a committee member. He was not the appointing authority. The corrections of the marks was also at the end of the interview in the room where other members of the selection committee were there and even before submitting the result of the selection committee.One can always have a second thought in the matter and, accordingly marks can be corrected. As per the procedure of appointment, the

records of the Selection Commitee is required to be forwarded to the Head Office for its perusal and concurrence and with the approval of the Head Office, appointment is given by some other officer in his office to the candidate in question. Thus, it was not in the hands of the petitioner to make the appointment of the person in whose favour some more marks were given. In any case, the appointment on the basis of the more marks which was given to a peon in the year 1983, cannot and should not have been re-opened by way of inquiry in the year 1992. This itself is a ground which requires interference in the matter of punishment which is on the fact of it quite disproportionate to the misconduct.

As far as charges no. 2 and 3 are concerned, the finding of the inquiry officer is that the petitioner is negligent in the performance of his duty. In absence of any allegations about financial involvement, the proved misconduct of negligence in the performance of the duty is not a ground warranting the extreme penalty of removal and for that the same are required to be treated as a minor misconduct. Mr.Hasurkar, ld. Govt.Solicitor however invited my attention to the decision of the Supreme Court, in the case of Indian Oil Corportion Limited vs. Ashok Kumar Arora, AIR 1997, p. 1030, and submitted that it is not open for this court to interfere with the finding of the fact recorded bythe disciplinary authority. That was a case when the forged medical bills were submitted by the employee for reinbursement wherein a finding was recorded by a statutoty authority that the delinquent employee was main brain behind such bills, not only for himself but for other employess. In fact, other employees admitted the charge against them. Under the circumstances, the minor penalty was imposed on the other employees, while the order of dismissal was passed against the delinquent. The High Court interferred in the matter. The Apex Court set aside the deicison of the High Court. Considering the facts and circumstances of the case and more particularly the delinquent in the case before the Apex Court was the main brain behind submission of the forged medical bills, the Apex Court set aside the order of the High Court. However, considering the facts and circumstances of the case,the charges levelled against the petitoner are not serious and quite minor in nature and considering the fact of delay in holding the inquiry, the extreme penalty is not at all called for. In my opinion, the judgment cited by the learned Govt. Solicitor will not be any assitance to him.

In the result, the petition is allowed. The

impugned order at Annexure-A dated 5.8.1998 of removal passed against the petitioner is quashed and set aside. The respondent is directed to reinstate the petitioner forthwith on or before 30.9.1998 with all monetory benefits.. Since the finding has been recorded as far as charges no. 2 and 3 are concerned, which are proved for the negligence in the performance of the duty which,in my opinion, are quite minor, the respondent may re-consider their decision and can impose minor punishment with respect to those charges after reinstating the petitioner. Rule made absolute accordingly with no order as to costs.

At this stage, Mr. Hasurkar learned Government Solicitor requests to stay the operation and implementation of this order to enable him to challenge this order before higher forum. Since the petitioner is retiring on 30.9.1998, no useful purpose will be served in staying the operation and implementation of this order, hence the request is rejected. D.S. Permitted.

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